

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 4:05-cv-00329-GKF-PJC
)	
TYSON FOODS, INC., <i>et al.</i> ,)	
)	
Defendants.)	

**DEFENDANTS’ BRIEF IN OPPOSITION TO PLAINTIFFS’ MOTION IN LIMINE TO
PRECLUDE ARGUMENT, QUESTIONING, OR EVIDENCE THAT ENTRY OF THE
REQUESTED INJUNCTION UNDER RCRA WOULD INTERFERE OR CONFLICT
WITH ONE OR MORE STATE REGULATORY PROGRAMS (Dkt. No. 2416)**

Defendants respectfully submit this brief in opposition to Plaintiffs’ *Motion in Limine to Preclude Argument, Questioning, or Evidence That Entry of the Requested Injunctive Relief Under RCRA Would Interfere or Conflict with one or more State Regulatory Programs*, Dkt. No. 2416 (Aug. 5, 2009) (“Motion”). Plaintiffs’ Motion seeks to preclude Defendants from making any reference to the potential that injunctive relief entered pursuant to RCRA may conflict with the comprehensive programs put in place by State authorities to implement RCRA’s “solid waste” requirements and regulations. *See* 42 U.S.C. § 6941 *et seq.* Such evidence is plainly relevant both as to liability and to the appropriateness and scope of injunctive relief. Accordingly, Plaintiffs’ Motion should be denied.

Legal Standard

Evidence is considered relevant to the extent that it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Fed. R. Evid. 401. Relevant evidence is generally admissible. Fed. R. Evid. 402. “The determination of whether the evidence is

relevant is a matter within the sound discretion of the trial court.’” *Gomez v. Martin Marietta Corp.*, 50 F.3d 1511, 1518 (10th Cir. 1995) (quoting *Texas E. Transmission Corp. v. Marine Office-Appleton & Cox Corp.*, 579 F.2d 561, 566 (10th Cir. 1978)).

Argument

I. Evidence that Entry of an Injunction pursuant to RCRA may Conflict with State Regulatory Programs in Oklahoma and Arkansas Is Relevant and Admissible

Plaintiffs seek to exclude as irrelevant any discussion of the possibility that the entry of an injunction pursuant to RCRA may conflict with state regulatory programs. Plaintiffs’ Motion on its face goes only to the explicit suggestion that such a conflict *will* result. Indeed, the only example Plaintiffs supply of the sort of discussion they hope to exclude is an amicus brief filed by the State of Arkansas in opposition to Plaintiffs’ motion for a preliminary injunction, which demonstrated that granting Plaintiffs’ motion and entering the injunction Plaintiffs requested would have supplanted portions of Arkansas’ state-implemented and federally approved RCRA program. *See* Motion at 1 (citing Arkansas Amicus Brief, Dkt. No. 1543). However, what Plaintiffs likely hope to exclude through this motion is any evidence or discussion *at all* pertaining to the manner in which Oklahoma and Arkansas have implemented RCRA’s solid waste provisions, as an injunction entered pursuant to RCRA *may* upset the manner in which each State has elected to regulate (or, rather, not regulate) poultry litter under RCRA. Plaintiffs seek to exclude such evidence because, contrary to the view Plaintiffs advance in this lawsuit, the responsible officials and agencies in both States do not regulate land-applied poultry litter as a RCRA-covered solid waste.

Plaintiffs argue that such evidence is irrelevant because federal law trumps state law, so the fact that an injunction entered pursuant to RCRA may supplant state regulations is not relevant. *See* Motion at 1-3. However, evidence of each State’s RCRA program, and

specifically their declination to regulate poultry litter as a RCRA solid waste, would not be offered to prove the controlling legal standard as Plaintiffs suggest. Indeed, that would be a question of law for the Court, not proof for the fact finder.¹ Instead, evidence regarding State RCRA regulation is relevant factual evidence for at least three separate reasons: first, state regulators' failure to regulate land applied poultry litter as a solid waste is relevant evidence as to whether poultry litter is being "discarded" or "beneficially applied" by poultry Growers and therefore RCRA-covered solid waste; second, such evidence is relevant to Plaintiffs' motivations in bringing this lawsuit; and third, such evidence is relevant to the scope of any injunctive relief, if necessary. Therefore, the evidence is admissible. *See* Fed. R. Evid. 402.

A. Evidence that State Regulators Have Not Treated Land Applied Poultry Litter As A Solid Waste Is Relevant to Whether Poultry Litter is Discarded Material and therefore a RCRA Solid Waste

First, the fact that State regulators have declined to treat poultry litter as a solid waste is relevant evidence of whether poultry growers are discarding poultry litter in the IRW or rather are beneficially applying it as a fertilizer and/or soil conditioner. As the Court concluded in denying the parties' cross-motions for summary judgment as to Count 3, whether poultry litter becomes "solid waste" requires discerning the point at which it is "over-applied" and therefore constitutes discarded material rather than a beneficial fertilizer and/or soil conditioner. *See* Hearing of August 18, 2009 (Transcript not yet available). The examinations of state regulators who are charged with implementing RCRA are relevant to whether poultry litter is being "discarded" in the IRW.

¹ Tellingly, Plaintiffs fail to reference any authority for the proposition that, as a matter of evidentiary law, any discussion or evidence of state regulatory programs is irrelevant and subject to exclusion under Rule 402.

RCRA separately addresses “hazardous waste” and “solid waste.” While EPA directly administers RCRA’s “hazardous waste” provisions in Subtitle C, RCRA charges states with the primary responsibility for implementing Subtitle D’s “solid waste” requirements. *See* 42 U.S.C. § 6941 (RCRA’s solid waste objectives “are to be accomplished through Federal technical and financial assistance to States or regional authorities for comprehensive planning pursuant to Federal guidelines designed to foster cooperation among Federal, State, and local governments and private industry.”); *Identification of Non-Hazardous Materials that are Solid Waste*, 74 Fed. Reg. 41, 50 (Jan. 2009). Specifically, States are charged with determining how solid wastes within each State should be handled, and where and how they should be discarded consistent with RCRA and EPA’s authoritative implementing guidelines. *Id.*²

In both Oklahoma and Arkansas, the state regulators charged with implementing RCRA have never determined that poultry litter should be regulated as a RCRA solid waste. Arkansas’ previously-submitted amicus brief demonstrates how Plaintiffs’ requested injunction under RCRA would upset Arkansas’ federally-approved State RCRA program, which has never regulated land-applied animal manures as a RCRA solid waste. *See* Dkt. No. 1543 (Feb. 15, 2008). Similarly for Oklahoma, Steve Thompson, Executive Director of the Oklahoma Department of Environmental Quality (“ODEQ”), testified that ODEQ, which is responsible for implementing RCRA’s solid waste provisions, has never treated land applied poultry litter as a solid waste. *See* Steve Thompson Dep. at 23:1-24, 33:8-13 (Ex. 1). Scott Thompson, Director of ODEQ’s land protection division, similarly acknowledged that ODEQ has never classified poultry litter as a RCRA solid waste. *See* Scott Thompson Dep. at 19:2-20:4 (Ex. 2). The fact

² In denying Defendants’ motion for summary judgment as to RCRA, the Court necessarily determined that EPA has not issued an authoritative determination as to whether poultry litter is a RCRA-covered solid waste, leaving States free to regulate it at their discretion.

that the responsible state regulators have come to this conclusion is relevant evidence of whether poultry litter is being discarded within the IRW. As the Court articulated its understanding of RCRA's solid waste rules, the fact finder will have to determine the relevant criteria for discerning when poultry litter is beneficially applied as opposed to being discarded. The criteria looked at and determinations reached by the responsible state regulators are relevant and useful evidence as to that point, regardless of whether an injunction that this Court may issue may conflict therewith.

Second, the fact that State regulators have declined to treat poultry litter as a solid waste is evidence as to Growers' state of mind with regard to whether they are "discarding" poultry litter in the IRW. Accepting *arguendo* Plaintiffs' contention that Oklahoma's state-drafted and approved animal waste management plans are merely "guidance," a poultry Grower seeking to comply fully with all applicable environmental laws, including RCRA, could well consult Oklahoma's solid waste program, poultry litter laws and regulations, and other state programs to determine whether state regulators have ever classified poultry litter as a solid waste. RCRA defines "solid waste" as material that has been "discarded" or "thrown away." *See Am. Petroleum Inst. v. EPA*, 216 F.3d 50, 55-56 (D.C. Cir. 2000); *Am. Mining Congress v. EPA*, 824 F.2d 1177, 1179 (D.C. Cir. 1987). As Defendants will demonstrate at trial, poultry litter contains numerous macro- and micro-nutrients in addition to phosphorous, all of which agronomically benefit crop growth. A poultry grower looking to comply with the law could conclude that so long as the litter is agronomically benefiting the crops, and so long as the application is consistent with a State-issued animal waste management plan that was designed and approved by the State to prevent phosphorous runoff or contamination, the application constitutes a beneficial purpose and is not waste disposal. Whether or not state regulators have elected to treat land-

applied poultry litter as a RCRA solid waste is relevant evidence that a grower might rely on in determining whether litter application is permissible.

Evidence of the determinations made by the responsible State regulators is therefore relevant and admissible under Federal Rule of Evidence 402.

B. Evidence that State Regulators Have Not Treated Land Applied Poultry Litter As A Solid Waste Is Relevant to Plaintiffs Motivations For Filing this Lawsuit

In presenting their case, Plaintiffs will doubtless purport to be representing the public good on behalf of the government and people of Oklahoma. Indeed, particularly if this case is tried to a jury, such a presentation will be calculated to place Defendants in a poor light while ascribing altruistic motives to Plaintiffs and their counsel. Defendants have every right to counter any such presentation. It is well established that a party's motivations in bringing a lawsuit are relevant evidence of bias and motive. *See, e.g., Pittsley v. Warish*, 927 F.2d 3, 10 (1st Cir. 1991) (admitting evidence of prior criminal charges against Plaintiff that "were probative in demonstrating motive and bias" in bringing the present lawsuit). Here, the fact that Plaintiffs are advancing a legal theory and seeking relief that is at odds with the view of the professional state regulators who are charged day in and day out with protecting the environment, health, and safety of Oklahoma and Oklahomans is relevant evidence of Plaintiffs' potential biases and motivations.

C. Evidence that State Regulators Have Not Treated Land Applied Poultry Litter As A Solid Waste Is Relevant to the Scope of Injunctive Relief

Oklahoma's declination to treat poultry litter as a solid waste is also relevant to the scope of any injunction entered in this litigation. The issuance of injunctive relief is within the sound discretion of the court. *Hecht v. Bowles*, 321 U.S. 321, 329 (1944). In the event that Defendants are found to be liable, the Court should take into account existing poultry litter regulations as well as the impact that an injunction may have on existing state programs, both in Oklahoma and

in Arkansas. *See Armstrong v. Davis*, 275 F.3d 849, 872 (9th Cir. 2001) (“In determining the scope of injunctive relief that interferes with the affairs of a state agency, we must ensure, out of federalism concerns, that the injunction ‘heels close to the identified violation,’ and is not overly ‘intrusive and unworkable . . . [and] would [not] require for its enforcement the continuous supervision by the federal court over the conduct of [state officers].’”) (quoting *Gilmore v. California*, 220 F.3d 987, 1005 (9th Cir. 2000); *O’Shea v. Littleton*, 414 U.S. 488, 500, 501 (1974)); *Willcox v. Consolidated Gas Co.*, 212 U.S. 19, 41 (1909) (“The case must be a clear one before the courts ought to be asked to interfere [by injunction] with state legislation upon the subject of [gas] rates....”). Further, consideration of the existing regulations and enforcement by pertinent agency officials is particularly relevant where, as here, the ruling “involves technical or scientific matters within the agency’s area of expertise.” *Utah Envtl. Cong. v. Bosworth*, 443 F.3d 732, 739 (10th Cir. 2006) (“Deference to the agency is especially strong where the challenged decisions involve technical or scientific matters within the agency’s area of expertise.”) (citing *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 378 (1989)).

CONCLUSION

For the foregoing reasons, Plaintiffs’ Motion should be denied.

Respectfully submitted,

BY: /s/ Jay T. Jorgensen
 Thomas C. Green
 Mark D. Hopson
 Jay T. Jorgensen
 Gordon D. Todd
 SIDLEY AUSTIN LLP
 1501 K Street, N.W.
 Washington, D.C. 20005-1401
 Telephone: (202) 736-8000
 Facsimile: (202) 736-8711

-and-

Robert W. George
Vice President & Associate General Counsel
Tyson Foods, Inc.
Bryan Burns
Timothy T. Jones
2210 West Oaklawn Drive
Springdale, Ark. 72764
Telephone: (479) 290-4076
Facsimile: (479) 290-7967

-and-

Michael R. Bond
KUTAK ROCK LLP
Suite 400
234 East Millsap Road
Fayetteville, AR 72703-4099
Telephone: (479) 973-4200
Facsimile: (479) 973-0007

-and-

Patrick M. Ryan, OBA # 7864
Stephen L. Jantzen, OBA # 16247
RYAN, WHALEY & COLDIRON, P.C.
119 N. Robinson
900 Robinson Renaissance
Oklahoma City, OK 73102
Telephone: (405) 239-6040
Facsimile: (405) 239-6766

**ATTORNEYS FOR TYSON FOODS, INC.;
TYSON POULTRY, INC.; TYSON
CHICKEN, INC; AND COBB-VANTRESS,
INC.**

BY: /s/James M. Graves

(SIGNED BY FILING ATTORNEY WITH
PERMISSION)

Woodson W. Bassett III
Gary V. Weeks
James M. Graves
K.C. Dupps Tucker
BASSETT LAW FIRM
P.O. Box 3618
Fayetteville, AR 72702-3618

Telephone: (479) 521-9996
Facsimile: (479) 521-9600

-and-

Randall E. Rose, OBA #7753
George W. Owens
OWENS LAW FIRM, P.C.
234 W. 13th Street
Tulsa, OK 74119
Telephone: (918) 587-0021
Facsimile: (918) 587-6111

**ATTORNEYS FOR GEORGE'S, INC. AND
GEORGE'S FARMS, INC.**

BY: /s/ A. Scott McDaniel

(SIGNED BY FILING ATTORNEY WITH
PERMISSION)

A. Scott McDaniel, OBA #16460
Nicole M. Longwell, OBA #18771
Philip D. Hixon, OBA #19121
McDANIEL, HIXON, LONGWELL
& ACORD, PLLC
320 South Boston Ave., Ste. 700
Tulsa, OK 74103
Telephone: (918) 382-9200
Facsimile: (918) 382-9282

-and-

Sherry P. Bartley
MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, PLLC
425 W. Capitol Avenue, Suite 1800
Little Rock, AR 72201
Telephone: (501) 688-8800
Facsimile: (501) 688-8807

**ATTORNEYS FOR PETERSON
FARMS, INC.**

BY: /s/ John R. Elrod

(SIGNED BY FILING ATTORNEY WITH
PERMISSION)

John R. Elrod
Vicki Bronson, OBA #20574
P. Joshua Wisley
CONNER & WINTERS, L.L.P.

211 East Dickson Street
Fayetteville, AR 72701
Telephone: (479) 582-5711
Facsimile: (479) 587-1426

-and-

Bruce W. Freeman
D. Richard Funk
CONNER & WINTERS, L.L.P.
4000 One Williams Center
Tulsa, OK 74172
Telephone: (918) 586-5711
Facsimile: (918) 586-8553

**ATTORNEYS FOR SIMMONS FOODS,
INC.**

BY: /s/ Robert P. Redemann

(SIGNED BY FILING ATTORNEY WITH
PERMISSION)

Robert P. Redemann, OBA #7454
PERRINE, MCGIVERN, REDEMANN,
REID, BERRY & TAYLOR, P.L.L.C.
Post Office Box 1710
Tulsa, OK 74101-1710
Telephone: (918) 382-1400
Facsimile: (918) 382-1499

-and-

Robert E. Sanders
Stephen Williams
YOUNG WILLIAMS P.A.
Post Office Box 23059
Jackson, MS 39225-3059
Telephone: (601) 948-6100
Facsimile: (601) 355-6136

**ATTORNEYS FOR CAL-MAINE FARMS,
INC. AND CAL-MAINE FOODS, INC.**

BY: /s/ John H. Tucker

(SIGNED BY FILING ATTORNEY WITH
PERMISSION)

John H. Tucker, OBA #9110
Theresa Noble Hill, OBA #19119
RHODES, HIERONYMUS, JONES, TUCKER &
GABLE, PLLC
100 W. Fifth Street, Suite 400 (74103-4287)

P.O. Box 21100
Tulsa, Oklahoma 74121-1100
Telephone: (918) 582-1173
Facsimile: (918) 592-3390

-and-

Delmar R. Ehrich
Bruce Jones
Krisann C. Kleibacker Lee
FAEGRE & BENSON LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
Telephone: (612) 766-7000
Facsimile: (612) 766-1600
**ATTORNEYS FOR CARGILL, INC. AND
CARGILL TURKEY PRODUCTION, LLC**

CERTIFICATE OF SERVICE

I certify that on the 20th of August, 2009, I electronically transmitted the attached document to the court's electronic filing system, which will send the document to the following ECF registrants:

W. A. Drew Edmondson, Attorney General	drew_edmondson@oag.state.ok.us
Kelly Hunter Burch, Assistant Attorney General	kelly_burch@oag.state.ok.us
Tina L. Izadi, Assistant Attorney General	tina_izadi@oag.state.ok.us

Douglas Allen Wilson	doug_wilson@riggsabney.com,
Melvin David Riggs	driggs@riggsabney.com
Richard T. Garren	rgarren@riggsabney.com
Sharon K. Weaver	sweaver@riggsabney.com
David P. Page	dpage@riggsabney.com
Riggs Abney Neal Turpen Orbison & Lewis	

Robert Allen Nance	rnance@riggsabney.com
Dorothy Sharon Gentry	sgentry@riggsabney.com
Riggs Abney	

J. Randall Miller	rmiller@mkblaw.net
-------------------	--------------------

Louis W. Bullock	lbullock@bullock-blakemore.com
------------------	--------------------------------

Michael G. Rousseau	mrousseau@motleyrice.com
Jonathan D. Orent	jorent@motleyrice.com
Fidelma L. Fitzpatrick	ffitzpatrick@motleyrice.com
Motley Rice LLC	

Elizabeth C. Ward	lward@motleyrice.com
Frederick C. Baker	fbaker@motleyrice.com
William H. Narwold	bnarwold@motleyrice.com
Lee M. Heath	lheath@motleyrice.com
Elizabeth Claire Xidis	cxidis@motleyrice.com
Ingrid L. Moll	imoll@motleyrice.com
Motley Rice	

COUNSEL FOR PLAINTIFFS

Stephen L. Jantzen	sjantzen@ryanwhaley.com
Patrick M. Ryan	pryan@ryanwhaley.com
Paula M. Buchwald	pbuchwald@ryanwhaley.com
Ryan, Whaley & Coldiron, P.C.	

Mark D. Hopson	mhopson@sidley.com
Jay Thomas Jorgensen	jjorgensen@sidley.com
Timothy K. Webster	twebster@sidley.com

Gordon D. Todd
Erik J. Ives
Sidley Austin LLP

gtodd@sidley.com
eives@sidley.com

Robert W. George

robert.george@tyson.com

Michael R. Bond
Erin Walker Thompson
Kutak Rock LLP

michael.bond@kutakrock.com
erin.thompson@kutakrock.com

COUNSEL FOR TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC.; AND COBB-VANTRESS, INC.

R. Thomas Lay
Kerr, Irvine, Rhodes & Ables

rtl@kiralaw.com

Jennifer S. Griffin
Lathrop & Gage, L.C.

jgriffin@lathropgage.com

COUNSEL FOR WILLOW BROOK FOODS, INC.

Robert P. Redemann
Lawrence W. Zeringue
David C. Senger

rredemann@pmrlaw.net
lzingue@pmrlaw.net
dsenger@pmrlaw.net

Perrine, McGivern, Redemann, Reid, Berry & Taylor, PLLC

Robert E. Sanders
E. Stephen Williams
Young Williams P.A.

rsanders@youngwilliams.com
steve.williams@youngwilliams.com

COUNSEL FOR CAL-MAINE FOODS, INC. AND CAL-MAINE FARMS, INC.

George W. Owens
Randall E. Rose
The Owens Law Firm, P.C.

gwo@owenslawfirmmpc.com
rer@owenslawfirmmpc.com

James M. Graves
Gary V. Weeks
Paul E. Thompson, Jr.
Woody Bassett
Jennifer E. Lloyd
Bassett Law Firm

jgraves@bassettlawfirm.com
pthompson@bassettlawfirm.com
wbassett@bassettlawfirm.com
jlloyd@bassettlawfirm.com

COUNSEL FOR GEORGE'S INC. AND GEORGE'S FARMS, INC.

John R. Elrod
Vicki Bronson
P. Joshua Wisley
Conner & Winters, P.C.

jelrod@cwlaw.com
vbronson@cwlaw.com
jwisley@cwlaw.com

Bruce W. Freeman
D. Richard Funk
Conner & Winters, LLLP
COUNSEL FOR SIMMONS FOODS, INC.

bfreeman@cwlaw.com

John H. Tucker
Leslie J. Southerland
Colin H. Tucker
Theresa Noble Hill
Rhodes, Hieronymus, Jones, Tucker & Gable

jtuckercourts@rhodesokla.com
ljsoutherlandcourts@rhodesokla.com
chtucker@rhodesokla.com
thillcourts@rhodesokla.com

Terry W. West
The West Law Firm

terry@thewesetlawfirm.com

Delmar R. Ehrich
Bruce Jones
Krisann Kleibacker Lee
Todd P. Walker
Faegre & Benson LLP

dehrich@faegre.com
bjones@faegre.com
kklee@baegre.com
twalker@faegre.com

COUNSEL FOR CARGILL, INC. AND CARGILL TURKEY PRODUCTION, LLC

Michael D. Graves
D. Kenyon Williams, Jr.
COUNSEL FOR POULTRY GROWERS

mgraves@hallestill.com
kwilliams@hallestill.com

William B. Federman
Jennifer F. Sherrill
Federman & Sherwood

wfederman@aol.com
jfs@federmanlaw.com

Charles Moulton
Jim DePriest
Office of the Attorney General

charles.moulton@arkansag.gov
jim.depriest@arkansasag.gov

COUNSEL FOR THE STATE OF ARKANSAS AND THE ARKANSAS NATURAL RESOURCES COMMISSION

Carrie Griffith
COUNSEL FOR RAYMOND C. AND SHANNON ANDERSON

griffithlawoffice@yahoo.com

Gary S. Chilton
Holladay, Chilton & Degiusti, PLLC

gchilton@hcdattorneys.com

Victor E. Schwartz
Cary Silverman
Shook, Hardy & Bacon, LLP

vschwartz@shb.com
csilverman@shb.com

Robin S. Conrad

rconrad@uschamber.com

National Chamber Litigation Center, Inc.

**COUNSEL FOR AMICI CURIAE CHAMBER OF COMMERCE FOR THE U.S. AND
THE AMERICAN TORT REFORM ASSOCIATION**

Richard C. Ford
LeAnne Burnett
Crowe & Dunlevy

fordr@crowedunlevy.com
burnettl@crowedunlevy.com

COUNSEL FOR AMICUS CURIAE OKLAHOMA FARM BUREAU, INC.

M. Richard Mullins
McAfee & Taft

richard.mullins@mcafeetaft.com

James D. Bradbury
James D. Bradbury, PLLC

jim@bradburycounsel.com

**COUNSEL FOR AMICI CURIAE TEXAS FARM BUREAU, TEXAS CATTLE
FEEDERS ASSOCIATION, TEXAS PORK PRODUCERS ASSOCIATION AND TEXAS
ASSOCIATION OF DAIRYMEN**

I also hereby certify that I served the attached documents by United States Postal Service,
proper postage paid, on the following who are not registered participants of the ECF System:

J.D. Strong
Secretary of the Environment
State of Oklahoma
3800 North Classen
Oklahoma City, OK 73118

Dustin McDaniel
Justin Allen
Office of the Attorney General of Arkansas
323 Center Street, Suite 200
Little Rock, AR 72201-2610
**COUNSEL FOR THE STATE OF
ARKANSAS AND THE ARKANSAS
NATURAL RESOURCES COMMISSION**

John E. and Virginia W. Adair Family Trust
Route 2 Box 1160
Stilwell, OK 74960

Cary Silverman
Shook Hardy & Bacon LLP
600 14th Street NW, Suite 800
Washington, D.C. 20005-2004

Cherrie House
P.O. Box 1097
Stilwell, OK 74960

David Gregory Brown
Lathrop & Gage LC (Jefferson City)
314 E High Street
Jefferson City, MO 65101

Donna S Parker
34996 S 502 Road
Park Hill, OK 74451

Doris Mares
14943 SE 15th Street
Choctaw, OK 73020-7007

G Craig Heffington
20144 W Sixshooter Road
Cookson, OK 74427

George R Stubblefield
HC-66, Box 19-12
Proctor, OK 74457

Gordon W. and Susann Clinton
23605 S Goodnight Lane
Welling, OK 74471

Jerry M Maddux
Selby Connor Maddux Janer
P.O. Box Z
Bartlesville, OK 74005-5025

Jim Bagby
RR 2, Box 1711
Westville, OK 74965

Jonathan D Orent
Motley Rice LLC (Providence)
321 S Main Street
Providence, RI 02940

Marjorie Garman
19031 US HWY 412
Colcord, OK 74338-3861

Randall E Kahnke
Faegre & Benson (Minneapolis)
90 S 7th Street, Suite 2200
Minneapolis, MN 55402-3901

Richard E Parker
34996 S 502 Road
Park Hill, OK 74451

Robin L. Wofford
Route 2, Box 370
Watts, OK 74964

Steven B Randall
58185 County Road 658
Kansas, OK 74347

Victor E Schwartz
Shook Hardy & Bacon LLP
600 14th Street NW, Suite 800
Washington, D.C. 20005-2004

William House
P.O. Box 1097
Stilwell, OK 74960

/s/ Jay T. Jorgensen